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No.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

PETE WILSON, et al., *Petitioners*,

v.

JOHN ARMSTRONG, et al., *Respondents*.

STATE OF CALIFORNIA, et al., *Petitioners*,

v.

DERRICK CLARK, et al., *Respondents*.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Should the Court resolve the split among the circuits and determine whether Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act[1] apply to the States' management of their convicted felons?

2. Are the statutes valid Fourteenth Amendment enactments which support congressional abrogation of petitioners' Eleventh Amendment immunity?

3. Does *Ex parte Young* provides an exception to the state officials' Eleventh Amendment immunity?

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1. Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act will be referred to as "the statutes."

LIST OF PARTIES

In *Armstrong v. Wilson*, petitioners are Pete Wilson, Governor of the State of California, Joseph Sandoval, Secretary of the California Youth and Adult Corrections Agency, C.A. Terhune, Director of the California Department of Corrections, Robin Dezember, Deputy Director of Health Care Services for the California Department of Corrections, Judith McGillivray, Deputy Director of the Planning and Construction Division of the California Department of Corrections, David Tristan, Deputy Director of the Institutions Division of the California Department of Corrections, Marisela Montes, Deputy Director of the Parole and Community Services Division of the California Department of Corrections, and James Nielsen, Chairman of the California Board of Prison Terms. Respondents are a class comprising all present and future California state inmates and parolees with mobility, sight, hearing, learning, or kidney impairments that substantially limit one or more of their major life activities.

In *Clark v. State of California*, petitioners are the State of California, the California Department of Corrections, Pete Wilson, Governor of the State of California, Joseph Sandoval, Secretary of the California Youth and Adult Corrections Agency, C.A. Terhune, Director of the California Department of Corrections, Robin Dezember, Deputy Director of Health Care Services for the California Department of Corrections, Nadim Khoury, M.D., Assistant Deputy Director of Health Care Services for the California Department of Corrections, and Marjouri TaVoularis, M.D., Chief Psychiatrist for the California Department of Corrections. Respondents are a class comprising all persons with developmental disabilities under the control of the California Department of Corrections.

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OPINIONS BELOW

The opinion of the court of appeals in *Armstrong v. Wilson* is reported at 1997 WL 525521 (9th Cir. Aug. 27, 1997). Appendix 1a. The opinion of the district court is reported at 942 F. Supp. 1252 (N.D. Cal. 1996). Appendix 20a.

The opinion of the court of appeals in *Clark v. State of California* is reported at 1997 WL 525518 (9th Cir. Aug. 27, 1997). Appendix 46a. The opinion of the district court is unreported. Appendix 56a.

Petitioners submit this joint petition to address the identical or closely related issues raised by these companion cases.

STATEMENT OF JURISDICTION

The court of appeals entered its judgment in both cases on August 27, 1997. The jurisdiction of the Court is invoked under 28 U.S.C. § 1254(1) (1994).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Amendment XI [1798]

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

Amendment XIV [1868]

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

. . .

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

The Americans with Disabilities Act

Title II of the Americans with Disabilities Act is set forth at 42 U.S.C. §§ 12131-12134 (1994). It is presented in its entirety at Appendix 114a.

Section 504 of the Rehabilitation Act

Section 504 of the Rehabilitation Act of 1973 is set forth at 29 U.S.C. § 794 (1994). It is presented in its entirety at Appendix 117a.

STATEMENT OF THE CASES

Armstrong v. Wilson

Respondents initiated this suit by alleging that petitioners had violated the statutes by engaging in discrimination, failing to make correctional facilities accessible, and failing to provide access to correctional programs and activities, and had violated various regulations promulgated under the ADA. They sought wide-ranging and extraordinarily intrusive injunctive relief.

Pursuant to a stipulated process for determining liability and remedy, petitioners filed a dispositive motion in which they argued that the statutes are inapplicable to California's management of its convicted felons, and that the district court lacked jurisdiction pursuant to the Eleventh Amendment. The district court denied the motion, and entered findings of fact, conclusions of law, a remedial order, and an injunction. Appendix 77a.

Petitioners appealed to the Ninth Circuit, which affirmed the order of the district court. The court of appeals concluded that the statutes apply to California's management of its convicted felons, and that *Ex parte*

Young provides an exception to petitioners' immunity under the Eleventh Amendment. Appendix 11a-19a.

Clark v. State of California

Respondents initiated this suit by alleging that petitioners had violated the statutes by engaging in discrimination and failing to provide access to correctional programs and activities.[2] Petitioners responded by filing a motion to dismiss under Federal Rule of Civil Procedure 12(b). The district court denied the motion and concluded that the statutes apply to California's management of its convicted felons and that the statutes properly abrogated Eleventh Amendment immunity. Appendix 60a-68a.

Petitioners appealed the district court's denial of Eleventh Amendment immunity to the Ninth Circuit, which affirmed the opinion of the district court. In doing so, the court of appeals concluded that Congress properly abrogated the States' Eleventh Amendment immunity under the statutes, that California waived its immunity under the Rehabilitation Act, and that *Ex parte Young* provides an exception to the state officials' immunity under the Eleventh Amendment. Appendix 51a-55a.

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2. Respondents also sued for alleged constitutional violations under 42 U.S.C. § 1983 (1994). This aspect of the suit is not part of this appeal.

REASONS FOR GRANTING THE WRIT

These cases present the Court with the timely opportunity to resolve a clear and growing conflict among the circuits regarding the applicability of the statutes to the States' management of their convicted felons. In addition, these cases present the Court with the opportunity to address important issues regarding the application of Eleventh Amendment immunity, which the court of appeals decided in a manner that either conflicts with relevant decisions of the Court or involves important questions that have not been, but should be, settled by the Court. These issues are of exceptional importance, and provide the Court with the opportunity to delineate the scope of congressional powers to intrude into the States' management of their convicted felons.

I.

THERE IS A CLEAR CONFLICT AMONG THE CIRCUITS REGARDING THE APPLICABILITY OF THE STATUTES TO THE STATES' MANAGEMENT OF THEIR CONVICTED FELONS.

This petition should be granted to resolve the clear conflict among the circuits regarding the applicability of the statutes to the States' management and incarceration of their convicted felons. The need for guidance from the Court on the issue is acute. The Tenth and the Fourth Circuits have concluded that the statutes are inapplicable to inmates in state prisons. *Amos v. Maryland Dep't of Public Safety and Correctional Services*, No. 96-7091, 1997 WL 581652, at *1 (4th Cir. Sept. 22, 1997); *White v. Colorado*, 82 F.3d 364, 367 (10th Cir. 1996). The Third and Seventh Circuits have decided to the contrary. *Yeskey v. Pennsylvania Dep't of Corrections*,

118 F.3d 168, 172 (3d Cir. 1996); *Crawford v. Indiana Dep't of Corrections*, 115 F.3d 481, 486 (7th Cir. 1997); *but see Bryant v. Madigan*, 84 F.3d 246, 248 (7th Cir. 1996). In *Armstrong*, the Ninth Circuit aggravated the split by finding the statutes to be applicable. Appendix 11a (citing *Bonner v. Lewis*, 857 F.2d 559 (9th Cir. 1988) and *Duffy v. Riveland*, 98 F.3d 447 (9th Cir. 1996)).

The split among the circuits is the result of disparate applications of prior decisions of this Court. The Court has made clear that when Congress intends to alter the balance between the States and the Federal Government through legislation, it must make its intention to do so "unmistakably clear in the language of the statute." *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 65 (1989) (citing *Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 242 (1985)).

> Congress should make its intention "clear and manifest" if it intends to pre-empt the historic powers of the States. "In traditionally sensitive areas, such as legislation affecting the federal balance, the requirement of clear statement assures that the legislature has in fact faced, and intended to bring into issue, the critical matters involved in the judicial decision."

Gregory v. Ashcroft, 501 U.S. 452, 461 (1991) (quoting *Will v. Michigan Dep't of State Police*, 491 U.S. at 65) (internal citations omitted). "This plain statement rule is nothing more than an acknowledgement that the States retain substantial sovereign powers under our constitutional scheme, powers with which Congress does not readily interfere." *Id.*; *see also BFP v. Resolution Trust Corp.*, 114 S. Ct. 1757, 1764 (1994).

The Fourth Circuit has accepted and properly applied the plain statement rule. In *Amos v. Maryland Dep't of Public Safety and Correctional Servs.*, the Fourth Circuit squarely concluded that the statutes lack the

necessary plain statement to apply to the States' management of their prisons. 1997 WL 581652, at *6-7. In doing so, the Fourth Circuit confirmed and elaborated upon its prior decision in *Torcasio v. Murray*, 57 F.3d 1340 (4th Cir. 1995):

> *Torcasio* accurately outlined the parameters of the clear statement rule, stating that Congress must speak clearly in the statutory text when it intends to alter the traditional balance of power between the states and the federal government. . . . *Torcasio* also forcefully explained why the operation of state prisons is an area traditionally reserved to the states, and persuasively outlined the sundry ambiguities in the statutory text which reveal that Congress failed to speak with unmistakable clarity on the issue of whether [the statutes] apply to state prisons.

Amos v. Maryland Dep't of Public Safety and Correctional Servs., 1997 WL 581652, at *35-36 (citing *Torcasio v. Murray*, 57 F.3d at 1346).

The Ninth Circuit's decision in *Armstrong* flatly conflicts with the Fourth Circuit in both analysis and result. It held that "the plain language of the [statutes], and our prior interpretation of that language, support application of the statutes to state prisons." Appendix 11a. The Ninth Circuit turned the plain statement rule on its head by stating that "[n]othing in the legislative history of [the statutes] reflects an intent by Congress to exclude prisons or prisoners from the reach of the statutes." *Id.* at 13a. The plain statement rule requires the precise opposite. It requires a clear expression of congressional intent to *include* important areas of state sovereignty; it is not satisfied by a failure to *exclude* them.

The Fourth Circuit expressly acknowledged and rejected the Ninth Circuit's decisions and analysis, and all but invited this Court to review the issue:

> [W]e are (and we believe the Supreme Court will ultimately find itself) persuaded in no small measure by the extraordinarily circuitous statutory analyses which those courts reaching the contrary conclusion have undertaken and the considerable extra-interpretive energies that those courts have been forced to expend in order to limit the systemic chaos that would otherwise have followed on their holdings that these statutes apply to the Nation's myriad state prisons.

Amos v. Maryland Dep't of Public Safety and Correctional Servs., 1997 WL 581652, at *3-4.

The analysis and result in *Armstrong* are wrong and aggravate the growing conflict among the circuits. This petition should be granted to review this important conflict and correct the Ninth Circuit's error.

II.

THE NINTH CIRCUIT'S DECISIONS REGARDING ELEVENTH AMENDMENT IMMUNITY CONFLICT WITH DECISIONS OF THE COURT AND INVOLVE IMPORTANT ISSUES THAT SHOULD BE SETTLED BY THE COURT.

A. The decision in *Clark* regarding Congress's power to abrogate Eleventh Amendment immunity.

In *Clark*, the Ninth Circuit concluded that the statutes were properly enacted pursuant to the Fourteenth Amendment. Appendix 53a. Accordingly, the Ninth Circuit held that the statutes' abrogation of Eleventh Amendment immunity was effective. This petition should be granted because the conclusion that the statutes were

properly enacted pursuant to the Fourteenth Amendment conflicts with decisions of the Court and involves important issues that have not been, but should be, settled.

In *Seminole Tribe of Florida v. Florida*, 116 S. Ct. 1114 (1996), the test for determining whether Congress properly abrogated a State's immunity from liability under the Eleventh Amendment was reiterated. Courts must determine "first, whether Congress has 'unequivocally expresse[d] its intent to abrogate the immunity,' and second, whether Congress has acted 'pursuant to a valid exercise of power'" in abrogating the immunity. *Id.* at 1123 (citing *Green v. Mansour*, 474 U.S. 54, 68 (1985)). Congress may abrogate Eleventh Amendment immunity only when it enacts legislation pursuant to the Fourteenth Amendment. *Id.* at 1125.

Congress has unequivocally expressed its intent to abrogate Eleventh Amendment immunity under the statutes. *See* 42 U.S.C. § 12202; 42 U.S.C. § 2000d-7(a)(1). The statutes, however, were not and could not have been promulgated under Congress's Fourteenth Amendment powers.

A three-prong test is employed to evaluate whether a statute is properly enacted pursuant to the Fourteenth Amendment. *Katzenbach v. Morgan*, 384 U.S. 641, 651 (1966). The test asks whether the statute "[1] may be regarded as an enactment to enforce the Equal Protection Clause, [2] whether it is 'plainly adopted to that end' and [3] whether it is not prohibited by but is consistent with the 'letter and spirit of the Constitution.'" *Id.* (quoting *McCulloch v. Maryland*, 17 U.S. 316 (1819)). A statute may be considered an enactment to enforce the Equal Protection Clause if it seeks to remedy prior state action which "constituted an invidious discrimination in violation of the Equal Protection Clause." *Id.* at 656. "The Equal Protection Clause of the Fourteenth Amendment . . . forbids a State from arbitrarily

discriminating among different classes of persons." *Id.* at 660 (Harlan, J., dissenting).

The Ninth Circuit in *Clark* ignored this Court's prior decisions in the manner by which it concluded that the statutes are proper Fourteenth Amendment enactments. In *Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432 (1985), the Court found that the mentally retarded had not suffered a history of invidious arbitrary discrimination by the States. *Id.* at 442-46. The Court found that the mentally retarded "have a reduced ability to cope with and function in the everyday world," and that States have legitimate reasons for treating them differently. *Id.* at 442. The Court compared the mentally retarded with the disabled and the aged. *Id.* at 445-46. In describing the history of discrimination regarding the aged, the opinion stated:

> While the treatment of the aged in this Nation has not been wholly free of discrimination, such persons, unlike, say, those who have been discriminated against on the basis of race or national origin, have not experienced a "history of purposeful unequal treatment" or been subjected to unique disabilities on the basis of stereotyped characteristics not truly indicative of their abilities.

Id. at 441 (quoting *Massachusetts Bd. of Retirement v. Murgia*, 427 U.S. 307, 313 (1976)).

The Ninth Circuit in *Clark* ignored this Court's findings in *Cleburne*. Although the court of appeals properly noted that there must be a finding of invidious discrimination by the States for an enactment to be properly based on the Fourteenth Amendment, it concluded that the statutes satisfy this requirement merely because Congress stated that persons with disabilities have been subjected to discrimination. Appendix 53a (citing 42 U.S.C. § 12101(a) and 29 U.S.C. § 701(a)(5)). By

accepting Congress's statement over the Court's findings in *Cleburne*, the Ninth Circuit improperly allowed Congress to define and expand the scope of its powers under the Fourteenth Amendment in violation of the separation of powers doctrine and the Court's decision in *City of Boerne v. Flores*, 117 S. Ct. 2157 (1997).

Allowing Congress to legislate under the Fourteenth Amendment with regard to any group that it states has been subjected to discrimination would improperly sanction the exercise of ever-expanding and unreviewable congressional power over the States. "If we were to say that an act is valid if it is rationally related to achieving equal protection of the laws, then § 5 becomes a license to Congress to pass any sort of legislation whatsoever." *Wilson-Jones v. Caviness*, 99 F.3d 203, 209 (6th Cir. 1996).

In addition to ignoring the findings in *Cleburne* and the holding of *City of Boerne*, the Ninth Circuit failed to provide any substantive analysis of the second and third prongs of the *Katzenbach* test -- *i.e.*, whether there is a congruence between the statutes' ends and means, and whether the statutes are consistent with other provisions of the Constitution. *Katzenbach v. Morgan*, 384 U.S. at 651 (citing *South Carolina v. Katzenbach*, 383 U.S. 301, 334 (1965)).

With regard to the second prong, the Ninth Circuit failed to describe either any invidious or arbitrary discrimination by the State, or any correlation between the broad reach of the statutes and the discrimination sought to be remedied. "Strong measures appropriate to address one harm may be an unwarranted response to another, lesser one." *City of Boerne v. Flores*, 117 S. Ct. at 2169. At the district level, courts are struggling with this important issue and some have concluded that the statutes' means are incongruent with their ends. *E.g.*, *Pierce v. King*, 918 F. Supp. 932, 938 (D.N.C. 1996);

Nihiser v. Ohio EPA, No. C2-94-1258 (S.D. Ohio Aug. 7, 1997) (scheduled for publication).

With regard to the third prong, the Ninth Circuit wholly failed to address the conflict between the broad reach of the statutes and the States' sovereign interest in managing their convicted felons. The decision implicitly decides an important issue that has not been, but should be, decided by the Court: the scope of Congress's Fourteenth Amendment powers under circumstances that conflict with other constitutional principles. *See Oregon v. Mitchell*, 400 U.S. 112, 130 (1970) (opinion of Black, J.) (Congress exceeds its Fourteenth Amendment powers when it seeks to invade an area reserved to the States without enforcing the core promise of the Fourteenth Amendment prohibiting racial discrimination); *see also EEOC v. Wyoming*, 460 U.S. 226, 259-65 (1983) (Burger C.J., dissenting, joined by Rehnquist, O'Connor, and Powell, JJ.). The need for guidance from the Court on these important issues is critical.

B. The decisions regarding the *Ex parte Young* exception to Eleventh Amendment immunity.

In *Armstrong* and *Clark*, the Ninth Circuit concluded that *Ex parte Young*, 209 U.S. 123 (1908), provides an exception to the State officials' Eleventh Amendment immunity. Appendix 17a and 55a. This petition should be granted because this conclusion involves important issues that have not been, but should be, settled by the Court.

In *Idaho v. Coeur d'Alene Tribe of Idaho*, 117 S. Ct. 2028 (1997), the Court addressed the scope and application of the *Ex parte Young* exception to Eleventh Amendment immunity. In doing so, the Court reversed a decision of the Ninth Circuit that had allowed the Indian Tribe to sue the State of Idaho in federal court on the grounds that the suit sought only declaratory and

injunctive relief against state officials. *Id.* at 2032. A majority of the Court stated:

> To interpret *Young* to permit a federal court-action to proceed in every case where prospective declaratory and injunctive relief is sought against an officer, named in his individual capacity, would be to adhere to an empty formalism and to undermine the principle, reaffirmed just last Term in *Seminole Tribe*, that Eleventh Amendment immunity represents a real limitation on a federal court's federal-question jurisdiction.

Id. at 2034.

Although different theories were discussed by the Justices, a majority of the Court concluded that allowing the suit to proceed in federal court would unconstitutionally intrude upon state sovereignty. *Id.* at 2043 (opinion of Kennedy, J., joined by Rehnquist, C.J.) and 2044 (O'Connor, Scalia, and Thomas, JJ., concurring in part).

Like *Coeur d'Alene*, these cases are unlike typical *Ex parte Young* actions. First, California's management of its convicted felons is an essential attribute of its sovereignty. Second, if found to be applicable, the statutes and their implementing regulations would intrude extensively upon the discretion of prison administrators in managing inmates and parolees with disabilities. The scope of Congress's powers to intrude upon the States' management of their convicted felons is an important issue that has not been, but should be, decided by this Court. *Compare Garcia v. San Antonio Metro. Transit Auth.*, 469 U.S. 528, 547-56 (1985), *with Printz v. United States*, 117 S. Ct. 2365 (1997). If Congress's power to enact statutory benefits is extended to the States' management of their convicted felons, permitting *Ex parte*

Young actions against state prison officials based on such statutes usurps an essential area of State sovereignty.

This petition presents the opportunity for the Court to resolve these important unsettled issues and determine whether state prison inmates may avoid the Eleventh Amendment bar and avail themselves of *Ex parte Young* in these cases. The Court should take this opportunity and grant the petition.

III.

THE QUESTIONS PRESENTED ARE IMPORTANT.

The questions presented in this petition involve fundamental issues of federalism regarding congressional intrusion into the States' sovereign interest in managing their convicted felons. Furthermore, application of the statutes would be extraordinarily intrusive and have profound consequences on the administration of the States' prisons. Because the need for guidance from the Court in this area is critical, this petition should be granted.

Federalism embodies one of the most central components of the American system of government. The Constitution created a federal government of limited powers, and reserved to the States substantial sovereign authority. *Gregory v. Ashcroft*, 501 U.S. 452, 457 (1991).

> "'[T]he people of each State compose a State, having its own government, and endowed with all the functions essential to separate and independent existence,'. . . '[W]ithout the States in union, there could be no such political body as the United States.' Not only, therefore, can there be no loss of separate and independent autonomy to the States, through their union

> under the Constitution, but it may be not unreasonably said that the preservation of the States, and the maintenance of their governments, are as much within the design and care of the Constitution as the preservation of the Union and the maintenance of the National government. The Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States."

Id. (quoting *Texas v. White*, 7 Wall. 700, 725 (1869) and *Lane County v. Oregon*, 7 Wall. 71, 76 (1869)).

> This federalist structure of joint sovereigns preserves to the people numerous advantages. It assures a decentralized government that will be more sensitive to the diverse needs of a heterogenous society; it increases opportunity for citizen involvement in democratic processes; it allows for more innovation and experimentation in government; and it makes government more responsive by putting the States in competition for a mobile citizenry.

Id. at 458.

"Perhaps the principal benefit of the federalist system is a check on abuses of government power." *Id.* "Just as the separation and independence of the coordinate branches of the Federal Government serves to prevent the accumulation of excessive power in any one branch, a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front." *Id.* "In the tension between federal and state power lies the promise of liberty." *Id.* at 459.

These principles have particular force when the Federal Government attempts to intrude into areas that are essential to state sovereignty. One of the functions

essential to a separate and independent state government is the management of felons convicted under state law. This function is part of the States' administration of criminal justice, an area of government traditionally reserved to the States. "Our national government is one of delegated powers only. Under our federal system the administration of criminal justice rests with the States except as Congress, acting within the scope of those delegated powers, has created offenses against the United States." *Screws v. United States*, 325 U.S. 91, 109 (1944). Criminalizing behavior and enforcing penal sanctions are primary functions of state government, and are part of the essence of state sovereignty. "It is difficult to imagine an activity in which a State has a stronger interest, or one that is more intricately bound up with state laws, regulations, and procedures, than the administration of its prisons." *Preiser v. Rodriguez,* 411 U.S. 475, 491-92 (1973).

The Court has frequently directed the federal judiciary to respect the States' interest in managing their convicted felons by requiring federal courts to extend substantial deference to the decisions of state prison officials when applying constitutional mandates. *See, e.g., Lewis v. Casey*, 116 S. Ct. 2174, 2185 (1996) (rejecting a judicial remedy that "failed to give adequate consideration to the views of state prison authorities"); *Sandin v. Conner*, 115 S. Ct. 2293, 2299 (1995) (explaining that federal district courts must "afford appropriate deference and flexibility to state officials trying to manage a volatile environment"); *Turner v. Safley*, 482 U.S. 78, 84-85 (1987) (holding that "where state penal institutions are involved, federal courts have a further reason for deference to the appropriate authorities"). The Court has not, however, defined the scope of Congress's power when convicted felons seek to enforce against the States statutory or regulatory rights created for the general public.

Furthermore, federal court enforcement of congressional mandates has serious repercussions on the administration of the States' prisons. The Fourth Circuit has "recognized the profound consequences that would result if the statutes were applied to state prisons: '[A]pplication of [the statutes] would have serious implications for the management of state prisons, in matters ranging from cell construction and modification, to inmate assignment, to scheduling, to security problems.'" *Amos v. Maryland Dep't of Public Safety and Correctional Servs.*, 1997 WL 581652, at *13 (citing *Torcasio v. Murray*, 57 F.3d at 1346).

These profound consequences are revealed in the district court's remedial orders in *Armstrong*. Among other intrusions, the district court has strictly applied federal regulations and has indicated disapproval of California's plans to geographically disperse inmates with disabilities and to provide for accessibility in new prison construction in a manner and degree deemed appropriate by prison administrators. Appendix 89a-113a. These intrusions impose severe disruptions on California's management of its convicted felons, and will require the expenditure of millions of dollars of finite state funds at the expense of other state services.

CONCLUSION

The petition for a writ of certiorari should be granted.

Dated: October 17, 1997.

Respectfully submitted,

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